

complaint has been dismissed for purposes of invoking the hearing procedures in §§ 222.102-222.113.

(c) Any notification that a complaint has been dismissed includes the reasons why the Assistant Secretary determined that the complaint did not meet the requirements in §§ 222.102 and 222.103.

(d) Notification that a complaint has been dismissed does not preclude other efforts to investigate or resolve the issues raised in the complaint, including the filing of an amended complaint.

(Authority: 20 U.S.C. 7704(e)(1))

§ 222.105-222.107 [Reserved]

§ 222.108 What actions must be taken upon receipt of a complaint?

Within 10 working days of receipt of a complaint, the Secretary or his designee—

(a) Designates a hearing examiner to conduct a hearing;

(b) Designates a time for the hearing that is no more than 30 days after the designation of a hearing examiner;

(c) Designates a place for the hearing that, to the extent possible, is—

(1) Near the LEA; or

(2) At another location convenient to the tribe and the LEA, if it is determined that there is good cause to designate another location;

(d) Notifies the tribe and the LEA of the time, place, and nature of the hearing; and

(e) Transmits copies of the complaint to the LEA and the affected tribe or tribes.

(Authority: 20 U.S.C. 7704(e))

§ 222.109 When may a local educational agency reply to a complaint?

An LEA's reply to the charges in the complaint must be filed with the hearing examiner within 15 days of the date the LEA receives a copy of the notice and complaint described in § 222.108 (d) and (e) from the hearing examiner.

(Authority: 20 U.S.C. 7704(e))

§ 222.110 What are the procedures for conducting a hearing on a local educational agency's Indian policies and procedures?

Hearings on IPP complaints filed by an Indian tribe or tribes against an LEA are conducted as follows:

(a) The hearing must be open to the public.

(b) Parties may be represented by counsel.

(c)(1) Each party may submit oral and written testimony that is relevant to the issues in the proceeding and make recommendations concerning appropriate remedial actions.

(2) A party may object to evidence it considers to be irrelevant or unduly repetitious.

(d) No party shall communicate orally or in writing with the hearing examiner or the Assistant Secretary on matters under review, except minor procedural matters, unless all parties to the complaint are given—

(1) Timely and adequate notice of the communication; and

(2) Reasonable opportunity to respond.

(e) For each document that a party submits, the party shall—

(1) File one copy for inclusion in the record of the proceeding; and

(2) Provide a copy to each of the other parties to the proceeding.

(f) Each party shall bear only its own costs in the proceeding.

(Authority: 20 U.S.C. 7704(e))

§ 222.111 What is the authority of the hearing examiner in conducting a hearing?

The hearing examiner is authorized to conduct a hearing under section 8004(e) and §§ 222.109-222.113 as follows:

(a) The hearing examiner may—

(1) Clarify, simplify, or define the issues or consider other matters that may aid in the disposition of the complaint;

(2) Direct the parties to exchange relevant documents or information; and

(3) Examine witnesses.

(b) The hearing examiner—

(1) Regulates the course of proceedings and conduct of the parties;

(2) Arranges for the preparation of a transcript of each hearing and provides one copy to each party;

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- (3) Schedules the submission of oral and documentary evidence;
- (4) Receives, rules on, excludes, or limits evidence;
- (5) Establishes and maintains a record of the proceeding, including any transcripts referenced above;
- (6) Establishes reasonable rules governing public attendance at the proceeding; and
- (7) Is bound by all applicable statutes and regulations and may neither waive them nor rule them invalid.

(Authority: 20 U.S.C. 7704(e))

§ 222.112 What procedures are followed after the hearing?

(a) Each party may submit to the hearing examiner additional evidence that is relevant to the issues raised at the hearing, within the time period and in the manner specified by the hearing examiner.

(b) Within 30 days after the hearing, the hearing examiner—

(1) Makes, on the basis of the record, written findings of fact and recommendations concerning any appropriate remedial action that should be taken;

(2) Submits those findings and recommendations, along with the hearing record, to the Assistant Secretary; and

(3) Sends a copy of those findings and recommendations to each party.

(c)(1) Each party may file with the Assistant Secretary comments on the hearing examiner's findings and recommendations.

(2) The comments must be received by the Assistant Secretary within 10 days after the party receives a copy of the hearing examiner's findings and recommendations.

(Authority: 20 U.S.C. 7704(e))

§ 222.113 What are the responsibilities of the Assistant Secretary after the hearing?

(a) Within 30 days after receiving the entire hearing record and the hearing examiner's findings and recommendations, the Assistant Secretary makes, on the basis of the record, a written determination that includes—

(1) Any appropriate remedial action that the LEA must take;

(2) A schedule for completing any remedial action; and

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(3) The reasons for the Assistant Secretary's decision.

(b) After completing the final determination required by paragraph (a) of this section, the Assistant Secretary sends the parties a copy of that determination.

(c) The Assistant Secretary's final determination under paragraph (a) of this section is the final action of the Department concerning the complaint and is subject to judicial review.

(Authority: 20 U.S.C. 7704(e))

WITHHOLDING AND RELATED PROCEDURES FOR INDIAN POLICIES AND PROCEDURES

SOURCE: 62 FR 35416, July 1, 1997, unless otherwise noted.

§ 222.114 How does the Assistant Secretary implement the provisions of this subpart?

The Assistant Secretary implements section 8004 of the Act and this subpart through such actions as the Assistant Secretary determines to be appropriate, including the withholding of funds in accordance with §§ 222.115–222.122, after affording the affected LEA, parents, and Indian tribe or tribes an opportunity to present their views.

(Authority: 20 U.S.C. 7704 (d)(2), (e) (8)–(9))

§ 222.115 When does the Assistant Secretary withhold payments from a local educational agency under this subpart?

Except as provided in § 222.120, the Assistant Secretary withholds payments to an LEA if—

(a) The Assistant Secretary determines it is necessary to enforce the requirements of section 8004 of the Act or this subpart; or

(b) After a hearing has been conducted under section 8004(e) of the Act and §§ 222.102–222.113 (IPP hearing)—

(1) The LEA rejects the final determination of the Assistant Secretary; or

(2) The LEA fails to implement the required remedy within the time established and the Assistant Secretary determines that the required remedy will not be undertaken by the LEA even if